



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2013

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2013-05532

Dear Mr. Ohnemiller:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 487686 (Midland ID# 03-21).

The Midland Police Department (the "department") received a request for information related to a specified arrest. You state some information has been released to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the marked court-filed documents may not be withheld under section 552.108. As no other exception is raised for this information, it must be released.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

You state the remaining information relates to a pending criminal investigation and prosecution. Based on this representation, we find release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curium*, 536 S.W.2d 559 (Tex. 1976).

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which you state has already been released, and the DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

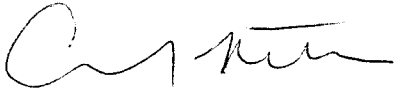
In summary, the marked court-filed documents must be released in accordance with section 552.022(a)(17) of the Government Code. Except for the basic information, which you state has already been released, and the DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

¹We note the requestor has a right of access under section 552.023 of the Government Code to her driver's license number. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person or person's agent asks governmental body for information concerning the person). However, should the department receive another request for this information from another requestor, we note section 552.130 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3), including a driver's license number. *See Gov't Code* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cindy Nettles', written over a horizontal line.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 487686

Enc. Submitted documents

c: Requestor
(w/o enclosures)